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City of Portland

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PENDLETON DIVISION

**OREGON FIREARMS FEDERATION,
INC., et al.,**

Plaintiffs,

v.

TINA KOTEK et al.,

Defendants,

and

**OREGON ALLIANCE FOR GUN
SAFETY,**

Intervenor-Defendant.

Case No. 2:22-cv-01815-IM (lead case)
3:22-cv-01859-IM (trailing case)
3:22-cv-01862-IM (trailing case)
3:22-cv-01869-IM (trailing case)

**CITY OF PORTLAND'S *AMICUS*
CURIAE BRIEF IN SUPPORT OF
STATE DEFENDANTS**

MARK FITZ et al.,

Plaintiffs,

v.

ELLEN F. ROSENBLUM et al.,

Defendants.

KATERINA B. EYRE et al.,

Plaintiffs,

v.

ELLEN F. ROSENBLUM et al.,

Defendants

and

**OREGON ALLIANCE FOR GUN
SAFETY,**

Intervenor-Defendant.

DANIEL AZZOPARDI et al.,

Plaintiffs,

v.

ELLEN F. ROSENBLUM et al.,

Defendants.

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INTRODUCTION

The City of Portland (“the City”) submits this brief as *amicus curiae* in support of state defendants’ response to the *Oregon Firearms Federation, Fitz, Eyre, and Azzopardi* plaintiffs’ motions for preliminary injunction. (Dkt. 83). This City supports the implementation of all sections of Ballot Measure 114 (“Measure 114”). However, the present brief focuses explicitly on section 11 of Ballot Measure 114 regarding the regulation of firearm magazines with the capacity to carry more than 10 rounds of ammunition, hereafter identified as large-capacity magazines (“LCM”). For the reasons noted below, the City supports the arguments put forward by state defendants in support of the legal validity of Ballot Measure 114 and offers evidence that regulating LCMs would counter the drivers of gun violence in Portland and within the state of Oregon.

CITY OF PORTLAND’S INTEREST

The City has a fundamental interest in the safety of its citizens, residents, visitors, and the broader community. The City, through the Portland Police Bureau (“PPB”) and along with other law-enforcement and community partners, is charged with maintaining public order, enforcing laws, and investigating crimes within its jurisdiction. Although the goal of reducing gun violence is not unique to the City, over the past several years the City has experienced an unprecedented increase in shooting incidents and gun-related homicides. As the largest municipality in Oregon, the City has borne the brunt of the effects of gun violence on its citizens and residents, and significant evidence connects the legality and ready availability of LCMs to that increase. Statistics kept by PPB show an apparent increase in gun violence beginning in late 2019 that has continued to the present, with reports in both 2021 and 2022 reflecting over 1,300 shooting incidents and over 60 firearm-related homicides in each of those years.

The volume of these firearm incidents has eclipsed all previous records for Portland. Ballot Measure 114, which passed by an overwhelming majority of City voters,¹ directly addresses those serious public-safety and public-health concerns. The City has a compelling interest in the safety of its population—and, therefore, a compelling interest in the correct construction and application of Measure 114. Because Measure 114, including its regulation of LCMs, directly addresses the City’s serious public-safety and public-health concerns, the City supports the prompt and full implementation of Measure 114. For those reasons, and for the additional reasons stated in state defendants’ response to plaintiffs’ motions for preliminary injunction, this court should deny plaintiffs’ motion.

ARGUMENT

In August 2019, a gunman in Dayton, Ohio, killed 9 people and wounded 27 others in just 32 seconds. The gunman used a rifle equipped with a 100-round drum magazine. This LCM allowed him to fire 41 shots in that span of seconds without reloading. He had in his possession a combined 250 rounds of ammunition. When asked about the gunman’s possession of such high-capacity magazines, Dayton Police Chief Richard Biehl commented, “It is fundamentally problematic to have that level of weaponry in a civilian environment.”²

Researchers have found a clear connection between the use of LCM and mass shootings. More broadly, they have concluded LCMs increase the lethality of any shooting incident and are a prominent factor in firearm crimes, as well as in the murders of law-enforcement officers.

¹ Ballot Measure 114 prevailed by a nearly three-to-one ratio in Multnomah County, which includes most of the City. See https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/2022-11_report_15.pdf (last visited on 02/07/2023).

² “Dayton Shooting Lasted Just 32 Seconds and Left 9 Dead. Here is the latest on the Tragedy” *Time Magazine*, August 9, 2019; Alejandro De La Garza and Michael Zennie. <https://time.com/5643405/what-to-know-shooting-dayton-ohio/>

Ballot Measure 114 (2022) (M 114) Section 11(d) defines a large-capacity magazine as:

[A] fixed or detachable magazine, belt, drum, feed strip, helical feeding device, or similar device, including any such device joined or coupled with another in any manner, or a kit with such parts, that has an overall capacity of, or that can be readily restored, changed, or converted to accept, more than 10 rounds of ammunition and allows a shooter to keep firing without having to pause to reload...

That definition mirrors the definition of the large-capacity magazines included in the 1994 federal assault-weapons ban and, with some exceptions, makes the “manufacture, importation, possession, use, purchase, sale or otherwise transfer” of a LCM a criminal offense in Oregon. Ballot Measure 114. The stated goal of this section is to reduce the prevalence of LCMs in Oregon and thereby reduce the incidence of gun violence and the lethality of individual gun incidents.

I. Research on Large-Capacity Magazines and Public Safety

In the decades since the expiration of the Federal Assault Weapons Ban—an expiration that has been coupled with a significant increase in mass-shooting events nationally—a significant body of research has been dedicated to the correlation between assault weapons ban including LCMs and lethal gun crime. Due in part to the lack of a collaborative national data collection system that breaks down shooting incidents, firearm homicides, firearm injuries, and the use of LCMs connected to these incidents, narrowing and accurately capturing the data explicitly related to LCMs can be difficult, Christopher S. Koper; William D. Johnson; Jordan L. Nichols; Ambrozine Ayers; Natalie Mullins; *Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: an Updated Examination of Local and National Sources*; Journal of Urban Health (J. Urban Health) Vol. 95, 313 (2018).

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See also John K. Roman; *FIRST REPORT OF THE EXPERT PANEL ON FIREARMS DATA INFRASTRUCTURE The State of Firearms Data in 2019* (January 2020) (Declaration of Victor Mercado Negro (“Mercado Negro Decl.”), ¶2, Ex. 1).

To compensate for the dearth of reliable, granular data across jurisdictions, researchers use various methods to establish correlations between the use of LCMs and gun violence. The evidence supporting their findings is overwhelming, as is illustrated by the following facts involving shooting incidents in which a shooter used a gun equipped with a LCM:

- Between 1984 to 1994—prior to the federal assault-weapons ban—gunmen in mass-shooting events who possessed weapons with LCMs wounded or killed an average of 29 victims per event, as compared with an average of only 13 victims per event when the offender did not use a firearm equipped with a LCM. Christopher S. Koper, *Reducing Gun Violence in America*. Ch. 12, 167 (Ed. Daniel W. Webster and Jon S. Vernick. 2013). In other words, a gunman without a LCM caused *less than half the casualties* than a gunman with a LCM in any given mass shooting.
- The most notorious U.S. mass-shooting incidents between the years of 2007 and 2013 included the shooting at Virginia Tech that left 33 dead and 17 wounded; the 2011 shooting of Congresswoman Gabrielle Giffords in Arizona that killed 6 and wounded 13; the 2012 Aurora, Colorado, movie-theatre shooting that left 12 dead and 58 wounded; and the elementary-school shooting in Newtown, Connecticut, that left 26 victims dead. Each of these involved gunmen using weapons equipped with LCMs carrying more than 10 rounds of ammunition. Koper, *Reducing Gun Violence in America*, Ch. 12 at 157-58.

- In 2017, in Las Vegas, Nevada, a gunman fired 100 rounds in 10 seconds without having to reload, in part by using a LCM in combination with other firearm accessories that were legal at the time.³
- Analysis indicates that semi-automatic guns capable of being outfitted with LCMs account for between 22% to 36% of guns connected to crimes and around 40% of cases involving serious violence. Moreover, the use of such weapons has grown by 33% to 112% in incidents involving mass shootings since the expiration of the federal assault-weapons ban. Koper et al. *Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: an Updated Examination of Local and National Sources*; Vol. 95, at 313.
- The use of LCM-compatible weapons accounts for 35% to 48% of the weapons used in the murder of police. Koper et al., *Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: an Updated Examination of Local and National Sources*, at 317.

Researchers and policy experts examining the effectiveness of various types of firearm regulations have reached consensus finding a prohibition on LCMs is the most important regulatory action that can be taken toward greater gun safety. *See* Louis Klarevas, PhD., et al., *The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings*, American Journal of Public Health (AJPH) Vol. 109, No. 12, 1754 (2019); *The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings, 1990–2017*” December 2019, Vol. 109, No. 12. Pg. 1754; Christopher Koper et al., *Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: an Updated Examination of Local and National Sources*, Journal of

³ <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/large-capacity-magazines/>

Urban Health (J. UrbanHealth) Vol. 95, 321 (2018). “The most important feature of the previous [federal] ban was the prohibition on large-capacity ammunition magazines. *A large magazine is arguably the most critical feature of an assault weapon, and restrictions on magazines have the potential to affect many more gun crimes than do those on military-style weapons.*” Koper, *Reducing Gun Violence in America*, Ch. 12 at 168, (Emphasis added).

While the reasoning behind the conclusion is myriad, it converges into this singularity, for a gunman intent on violence toward a single person or a group, LCMs increase the number of shots that can be taken quickly without the need to reload, allowing the shooter to target multiple people or a person multiple times. *See* Klarevas et al., 109, AJPH at 1754. This in turn increases the lethality of shootings, since victims who have been shot twice or more are 60% more likely to die than those who have been struck only once. Moreover, medical trauma centers have found that ‘multiple impact capability’ (that is, the ability to shoot a person multiple times), is connected to the use of LCMs in shooting incidents. *See id.* Klarevas states it succinctly: “shooters perceive LCMs to be more effective at killing many people; [and] ... LCMs are indeed more effective at killing many people.” Klarevas et al., 109 (AJPH) at 1760.

The study by the researchers Klarevas et al., in the American Journal of Public Health (2019) drew some telling conclusions from their research:

- 64% of high-fatality mass shootings involved the use of LCM.
- More people are killed when LCMs are used in mass shootings, with an average of 11.8 victims killed when LCMs are used versus 7.3 when not.
- States with LCM bans saw fewer mass shootings and fewer mass fatality (6+ victims) shootings than states without LCM bans.
- States with LCM bans saw fewer mass shootings overall, regardless of whether those incidents involved LCMs or not.

LCMs also allow a gunman to fire continuously for extended periods and thus provide cover for themselves. Without the need to pause to reload it is difficult for potential targets to seek cover or escape. It also frustrates law enforcements' ability to effectively intervene. *Id.* Measure 114's restrictions on LCMs are not a panacea to the disease of gun violence. It presents, however, an essential component of the larger remedy, regulation of gun accessories. Public-policy research has shown regulation of LCMs reduces incidents of gun violence, including total injuries and fatalities.

II. Recent Gun Violence Trends in Portland

In 2022, PPB recorded 1,306 shootings in the City and 101 homicides, including 76 by firearm. In 2021, PPB recorded 1,315 shootings and 92 homicides, including 68 by firearm according to PPB's Gun violence trends report (2023) (Mercado Negro Decl., ¶3, Ex. 2). The past 2 years have proved to be the deadliest in the City's history, far surpassing the previous record set in 1989 of 70 homicides in a single year—a time when the population of the City was one quarter smaller than it is now.⁴

Like many other jurisdictions, PPB has not documented a correlation between firearms recovered from criminal incidents and LCMs. Nevertheless, anecdotal evidence indicates that the gun-violence trends in the City and their correlation to LCMs are consistent with national trends and available data discussed previously. Examining available gun-violence-related data in the City, including shell casings and recovered guns, shows that the volume of ammunition being discharged during shooting incidents has dramatically increased and is attributable at least in part to the availability of LCM.

⁴ See <https://www.oregonlive.com/crime/2023/01/portlands-101-homicides-in-2022-set-new-record-at-some-point-we-have-to-be-tired-of-burying-our-children.html>; <https://www.biggestuscities.com/city/portland-oregon>.

Here are some illustrative examples:

- On February 5, 2022, PPB received calls of a male actively shooting victims around NW 6th Avenue and NW Glisan Street, where almost 24 cartridge casings were recovered. PPB was unable to locate a suspect at that time and continued to investigate, including obtaining an arrest warrant. On May 4, 2022, U.S. Marshals assisted with the suspect's apprehension and served a search warrant where three firearms were recovered. (Mercado Negro Decl., ¶4, Ex. 3).
- On October 6, 2022, the North precinct responded to an alarm call at a cannabis business. One of the suspects eluded officers in a stolen car, but officers located and detained a 14-year-old juvenile suspect who was still in the area. During an article search of the area, a loaded firearm with an LCM was recovered in the back of a neighboring business. (Mercado Negro Decl., ¶5, Ex. 4).
- An East precinct patrol sergeant conducted a traffic stop and found the suspect was a felon. A subsequent search uncovered eight firearms, at least four LCMs, and over two hundred rounds of ammunition in the vehicle before it was towed on December 21, 2022. (Mercado Negro Decl., ¶6, Ex. 5).
- PPB's Focused Intervention Team ("FIT") seized two crime firearms, and East precinct patrol seized another firearm, during the course of the night of December 28, 2022. All three firearms were located and seized during traffic stops. One of the firearms, a black Glock 17, 9mm handgun, was

found with an LCM alongside its standard magazine. (Mercado Negro Decl., ¶7, Ex. 6).

- On January 3, 2023, an adult male and two boys are facing firearm charges after an investigation by PPB's FIT unit where they initiated a traffic stop on a vehicle that was driving recklessly in an area known for a high rate of shootings. Three semiautomatic pistols and LCMs were seized during the traffic stop. (Mercado Negro Decl., ¶8, Ex. 7).
- On Thursday, January 6, 2023, a 14-year-old juvenile suspect was arrested at the Portland International Airport on charges of attempted murder in the second degree, assault in the first degree, unlawful use of a weapon, unlawful possession of a firearm and menacing with a firearm for shooting and critically injuring a juvenile 15-year-old boy. The incident occurred on November 18, 2022. The shooter used a semiautomatic handgun equipped with an LCM. (Mercado Negro Decl., ¶9, Ex. 8).
- On Friday, January 6, 2023, three suspects were arrested and three illegally possessed firearms were seized, including one with an LCM—an extra-high-capacity drum magazine—after suspects attempted to elude Portland Police officers. PPB used spike strips to stop the dangerously eluding vehicle, but the suspects ran from the vehicle while officers observed the suspects throwing objects as they ran. After an extensive search, the suspects were arrested and charged. (Mercado Negro Decl., ¶10, Ex. 9).

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CONCLUSION

In sum, the evidence linking LCMs to increases in violent crime, and to lethality when crimes occur, is significant. The restrictions on LCMs that Ballot Measure 114 would implement will have a direct, positive impact on gun-related crimes and on public health and safety, while continuing to allow the lawful use of firearms for self-defense consistently with the Second Amendment. For the foregoing reasons, the City of Portland supports the full and prompt implementation of Ballot Measure 114 and asks this court to deny plaintiffs' motions for preliminary injunction.

DATED: May 15, 2023.

Respectfully submitted,

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